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CHILE'S LEGAL ARCHITECTURE IN LIGHT OF INTERNATIONAL ADVANCES IN THE CRIMINALISATION OF ECOCIDE

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Cover photo: Carlos Vera Mansilla

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Abstract:

The article analyses the ecological crisis as a systemic threat resulting from a development model based on the overexploitation of natural common goods. In Chile, this crisis, exacerbated by a legal framework that, rather than preventing damage, has facilitated the expansion of extractivism under the guise of economic growth. Although the country has taken a significant step forward with Law 21.595, which incorporates environmental crimes into the Penal Code, severe institutional limitations remain in terms of enforcement, prevention and redress. Environmental protection continues to be subject to legal mechanisms that prioritise investment and the streamlining of projects over the rights of communities and ecosystems. In response to this, the article argues for the need to move towards real ecological justice, in which Nature is recognised as a subject of rights and severe environmental damage is penalised. In this process, the role of indigenous peoples is key: their spiritual, political and territorial connection to the environment constitutes a civilisational alternative to the extractivist paradigm. International instruments such as ILO Convention 169, the American Declaration on the Rights of Indigenous Peoples and the Escazú Agreement reinforce the State's duty to protect their territories and guarantee their binding participation. On a global scale, the article traces the development of the concept of ecocide, from its origins during the Vietnam War to the legal definition proposed by the Stop Ecocide Expert Panel (2021). Based on this development, it highlights the importance of recognising ecocide as the fifth crime under the jurisdiction of the International Criminal Court; Chile, as a State party to the Rome Statute, should promote its incorporation, it would establish a binding criminal standard that complements domestic advances -in particular, Law 21.595 on economic crimes and attacks against the environment- and reinforces the adequate protection of Nature. This proposal is in line with recent developments in the inter-American and universal systems: the Inter-American Court of Human Rights has affirmed the right to nature and the protection of its defenders. At the same time, discussions before the International Court of Justice (ICJ) have clarified state obligations in relation to attributable climate damage, especially in countries with high industrial impact. In short, it promotes a transformation of international law that articulates criminal justice, human rights, and the protection of life on the planet.

Keywords: Ecocide; environmental law; socio-environmental conflicts; climate change.

Introduction

Today, we are facing an unprecedented environmental crisis. Throughout history, humanity has made indiscriminate use of the environment, without much concern for the future. In fact, through its various interactions with nature, it has systematically affected and impacted ecosystems and biodiversity as a whole. Through the constant use and exploitation of common goods (natural resources for conventional growth paradigms), jungles, rivers, glaciers, and forests, among others, have been overexploited, destroyed and polluted.

This situation has led to a growing and increasingly visible deterioration of the natural systems that sustain our own lives and those of all living beings on Earth. In this process, we have plundered, persecuted, cornered and even exterminated entire peoples, especially those who, due to their condition, were able to coexist day by day with Nature without breaking its balance or leading to its disappearance. In this process, countless living species that had always been part of the biodiversity around us have also been wiped out, which has made both Nature and a vast number of people in almost every corner of the planet precarious, endangering not only their way of life but also their very survival, which, by extension, is also ours.

The abusive way in which humanity has overused the planet's natural resources and wealth has led to several systemic and multifunctional disasters that are difficult to enumerate; at least we can mention: the climate crisis, the loss of biodiversity and ecosystems, the pollution of air, land, fresh water and oceans, fragmentation, forced displacement and the disappearance of communities. On every continent and in every region, we can see environmental problems related to the irresponsible extraction of resources. In many cases, the current ecological consequences extend beyond national borders, and the conditions surrounding environmental damage respond to contexts different from those that once motivated international discussions on the protection of the environment and people..

The reports of the Intergovernmental Panel on Climate Change (IPCC) are damning: under current patterns of production and consumption, greenhouse gas emissions have caused global average temperatures to rise steadily. The IPCC study also points out that if the global average temperature exceeds 2.0 degrees Celsius, some ecosystems will be unable to reproduce[1]. As a result, the complex life forms that inhabit these ecosystems will not be able to continue living, including human beings. As a result, the complex life forms that inhabit these ecosystems will no longer be able to survive, including human beings.

The socio-environmental reality today compels us to take responsibility and urgent action in the face of a global crisis that is worsening as a result of the model and unequal development. Similarly, there is also a growing need among the population for a legal framework to protect communities and nature from these threats.

The above interpretation stems from countless territories and peoples who recognise the importance of a paradigm shift and legal certainty in protecting what enables life reproduction, understanding the urgency of fundamental changes in implementing

this protection and care. Legal systems and collective consciousness have had to be reconfigured to meet the requirements of these times.

I. Environmental background

The dangerous and unusual crossroads at which we find ourselves are widely recognised by scientific evidence, demonstrating the catastrophic environmental consequences expected if greenhouse gas (GHG) emissions and the destruction of ecosystems continue at the current rate[2]. The concept of climate change is defined in the United Nations (UN) Framework Convention as "a change in climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and is in addition to natural climate variability observed over comparable time period"[3].

In August 2021, was released the first chapter of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC)[4], confirming that it is human activity that has unequivocally caused the various changes in the climate we have experienced in recent times, such as changes in precipitation, changes in sea salinity, melting glaciers and the decline of Arctic sea ice, which has led to a sea level rise of 0.20 metres between 1901 and 2018.

The report is categorical in determining that global temperatures will continue to rise at least until the middle of the century under the current context of ecological and climate crisis. The 21st century will exceed the global increase of 1.5 °C to 2 °C unless drastic measures are taken to reduce CO2 emissions in the coming decades. This reality contrasts with the apparent failure to meet the Sustainable Development Goals (SDGs), especially by the countries that emit the most CO2 into the atmosphere[5]. In this regard, in Chile, the Climate Change Act came into force in 2022, defining this concept without any modifications to that used by the UN[6]. Chile has been designated as "highly vulnerable" because it meets most of the conditions described in the Convention (7 out of 9 indicators)[7].

The hottest years on record have been the most recent ones, compounded by a decline in average rainfall[8] and the resulting desertification and reduction or disappearance of a large number of watercourses[9]. Chile is currently experiencing one of the worst water crises in its history, affecting most of the country for more than a decade. The causes include overexploitation, characterised by the excessive granting of water rights beyond the actual capacity of the watercourses, particularly in the water imbalance of the water basin, as well as climate change[10]. It has resulted in a series of climate migrations. For example, in Regions IV and V[11], the demographic structure of various towns and communities throughout Chile has been altered.

Even though Chile is experiencing a mega drought[12], it has the largest freshwater reserves in South America, as it accounts for 80% of the region's glaciers. These are the primary sources of water for rivers and lakes, allowing these water basins to maintain relatively constant levels despite the current drought. However, the melting of the glaciers is jeopardising the future of the country's river networks and, consequently,

the population's access to water and the agricultural production system[13]. A recent report published by the European Geosciences Union has shown that glaciers are retreating at a rate never before recorded in 5,500 years. If not curbed, global warming could cause sea levels to rise by up to 3.4 metres over the course of this century[14]. Experts warn that, at the current rate of glacier retreat, the most affected glaciers will have disappeared within two decades, while by the end of the century, most of them will have melted[15].

A 2020 study by the Ministry of the Environment (MMA)[16] identified that pollution levels in Chile's rivers, lakes and coastal areas have increased, and that aquatic biodiversity has declined significantly. According to experts, Decree 90[17], which establishes emission standards for the regulation of pollutants associated with the discharge of liquid waste into marine and continental surface waters, does not meet the objective of protecting aquatic ecosystems, there is evidence of damage to ecosystems caused by industrial discharges or RILes (industrial liquid waste) and urban discharges, where key pollutants has been detected such as plant hormones[1819].

In recent years, wildfires have become a global problem, given their increasing severity and frequency. The leading causes are climate change and variability, changes in land use, the expansion of forestry activities, and the urban-forest interface[20]. According to data from CONAF, there has been a steady increase in the. number of fires throughout the country since 1963[21]. In the case of fires in Chile, the causes are almost entirely[22] anthropogenic[23].

The current Constitution of Chile enshrines the right to live in an environment free from pollution (Article 19, No. 8)[24] and establishes that it is the duty of the State to ensure that this right is not affected and to protect the preservation of nature. It establishes that the law may set specific restrictions on the exercise of certain rights or freedoms to protect them, which is why legislators are empowered to set standards that protect the environment and establish responsibilities for damage to nature.

Against this backdrop of ecological and environmental crisis, Chile also has fragmented legal regulations and weak state oversight in the application of sanctions, which have consolidated a legal framework that, far from protecting nature, legitimises its destruction under a logic of covert permissiveness. Although the right to live in a pollution-free environment is enshrined as a constitutional principle, extractive projects are permitted to proceed, resulting in devastated ecosystems and vulnerable communities, without providing effective or fair redress.

Consequently, organised communities have taken on a leading role in defending their environments, becoming popular watchdogs in the face of a State that is often absent or complicit. The recent enactment of Law 21.595[25] represents a step forward in the classification of economic and environmental crimes. Still, it does not go far enough to address the magnitude of the problem. Rather than an isolated legal reform, what is needed is a profound shift in the way we conceive of the relationship between law, territory and life: one that places Nature as the subject of protection and recognises that without ecological justice, there can be no justice at all.

II. Between progress and omissions: the limits of the law in the face of environmental devastation

The registry of 131 environmental conflicts on the INDH map[26] published in 2018 reveals a widespread situation of impunity and neglect in the face of non-compliance with existing regulations, versus the issue of environmental responsibility towards communities and ecosystems, coupled with a lack of information related to environmental crimes, which adds to the difficulty of proving such offences.

In addition to the above, the legal reasoning that allows environmental damage in exchange for the payment of monetary penalties, already provided for in the relevant resolutions authorising extraction works, precedes the existence of various bodies dedicated to the investigation, resolution, authorisation and control of environmental impacts or extraction activities.

Approximately 11% of projects go through Citizen Participation and Observations (PAC)[27], a process whose results are not binding. Therefore, it is essential to adopt oversight measures aimed at ensuring the proper implementation of the State's role as guarantor, so that environmental qualification resolutions (RCA) do not allow irreversible damage to ecosystems, in accordance with the United Nations guiding principles on business and human rights[28], which include: the United Nations Development Programme (UNDP)[29]; the Convention on Biological Diversity (Global Framework for Biological Diversity)[30]; the Convention on Wetlands (RAMSAR)[31]; the United Nations Framework Convention on Climate Change (UNFCCC)[32] and the Convention to Combat Desertification and Drought[33].

Currently, there is no legislation regarding the remedy of the negative consequences of extractive activities by those who cause the damage. It is the State that must ensure compliance with court rulings in favour of the protection of nature, through mechanisms such as financial penalties that allow for the financing of practical solutions to remedy, restore and repair such damage by recovering ecosystems, cleaning up Sacrificial Zones, eliminating tailings, purifying water and supplying it to human populations and ecosystems.

The importance of understanding existing crimes lies in the fact that ecocide must be a concept capable of addressing elements of conduct not covered by current regulations, embodying different levels of punishment to achieve a real deterrent effect and fill the regulatory gaps that explain the occurrence of environmental damage that is not attributable to current categories. Along with this, the residual and supplementary concept of liability for environmental damage is more akin to a civil action. Hence, the reasons underlying jurisdiction and sanctions operate in different areas of competence.
In July 2021, the Chamber of Deputies requested President Sebastián Piñera, under Resolution No. 1,620[34], "... that, immediately, the State of Chile express its willingness to support the inclusion of the crime of ecocide in the Statute of the International Criminal Court, and approved at the next meeting of the member states of that body".

Subsequently, in August 2021, MPs Raúl Soto Mardones and Cristina Girardi Lavín presented the "Bill to amend the Criminal Code to create and punish the crime of ecocide"[35]. Unfortunately, this proposal did not succeed. However, between November 2021 and January 2022, the organisation Chile Sin Ecocidio (Chile Without Ecocide)[36] worked on a Popular Initiative for the Constitutional Convention under the title "Protection of Nature, Criminalisation of the Crime of Ecocide"[37], which was subsequently promoted by Convention member Elsa Labraña along with nine other convention members, calling it the "Constitutional Convention Initiative that establishes the Recognition of the Value of Nature and Ecocide (Bulletin No. 990 - 5)[38]". The regulation was discussed and voted in favour of, although it was subsequently removed from the final draft of that first constituent process.

Finally, all these efforts are reflected in Law 21,595[39], published in August 2023, called the "Economic Crimes Law", which classifies economic crimes and environmental offences and modifies the criminal liability of legal persons. The bill (bulletins 13204-07[40] and 13205-07[41] consolidated) that classifies economic crimes and environmental offences harmonises and regulates a comprehensive catalogue of economic and environmental crimes[42]. To this end, it establishes categories of crimes, categorising them as "economic crimes" and applying differentiated penalties and other effects. It also establishes a special system for determining penalties, substituting penalties, determining the amount of fines and special disqualifications. In this regard, it updates some offences and creates new ones. In addition, it amends the law on criminal liability of legal persons, among others.

Before the enactment of the new Law 21,595[43], national legislation contained various environmental offences scattered throughout the Criminal Code and different special laws. Among others: 1) pollution offences: improper spread of pollutants (Article 291, Penal Code[44]); pollution of waters by hydrocarbons, especially marine waters (Article 136 of Law 18,892 on General Fisheries and Aquaculture[45]); illegal trafficking of hazardous waste (Article 44, Law No. 20,920, which establishes the framework for waste management, extended producer responsibility and the promotion of recycling[46]); 2) Crimes against flora and fauna: wildfires (Article 476 No. 3 of the Criminal Code[47], defined in Law No. 20,283[48], and Article 22 of Law 20,283 on Native Forest Recovery and Forestry Promotion[49]); 3) Damage to national monuments (Article 38 of Law No. 17,288[50]); 4) Rodeo and animal abuse (Articles 291 bis and ter, Criminal Code[51]); and 5) Illegal, unreported and unregulated fishing[52]. Along with these special offences, Law No. 19,300[53] establishes civil liability for environmental damage.

III. Human Rights and Indigenous Peoples

The relationship between indigenous peoples and nature is indissoluble; this bond has led peoples to develop ways of life that respect and care for nature. The richness of this connection leads to an understanding of concepts such as "land" and "territory" with diverse content and scope. "Land" consists of the specific physical spaces where communities live or carry out their daily activities; these spaces maintain community life to continue developing their ways of life. It involves the soil, subsoil, air, waters, coastal seas, sea ice, flora and fauna, and other elements that they have traditionally owned, occupied, or used, constituting the traditional sphere of their social activities[54].

On the other hand, “territory” is the environment where they carry out their daily lives and where they have frequent and regular harmonious contact with Nature, its constituent elements being ancestral and permanent occupation; the maintenance of their productive activities, as well as cultural reproduction and the permanent functioning of their institutions and internal authorities in that habitat[55].

The right of peoples in relation to these elements concerns the maintenance and promotion of the special relationship that places Nature at the centre of indigenous cultures as a fundamental pillar around which all political, social, economic, cultural and spiritual aspects revolve. It is an interdependent, intergenerational, sustainable and comprehensive relationship, in the sense that it affects all areas of the lives of people in a cross-cutting manner. On the other hand, we are talking about a right to protect this special relationship, understood through the protection of the land, natural elements, territory, landscape and cultures[56].

The adoption of ILO Convention 169[57] in 1989, incorporated into Chilean law in 2008, marked a milestone in the recognition of the rights of indigenous peoples. Among its aims, it seeks to prevent historical discrimination and legitimise aspirations to control their institutions, ways of life, economic development, and strengthen their identities, languages and religions[58]. It recognises that indigenous peoples do not enjoy fundamental human rights to the same extent as the national population and that their laws, customs and perspectives have been eroded. It emphasises the protection of the natural environment in which they live and occupy as a legal priority in state decisions[59].

A distinctive feature is that the various matters it regulates include the cooperation and participation of stakeholders in decisions and planning regarding measures to be adopted that may affect their lives. By signing, the State of Chile assumes the responsibility and commitment to develop, in conjunction with indigenous peoples, coordinated and systematic actions to guarantee respect for and protection of their rights. Therefore, they have to be consulted whenever legislative or administrative measures that may affect them are envisaged, ensuring the free participation of the people involved at all levels.

Indigenous consultation, particularly in its expression as the Indigenous Peoples Consultation Process (PCPI) under the Environmental Impact Assessment System (SEIA)[60], cannot be reduced to a symbolic formality. The Environmental Assessment Service (SEA) is obliged to design and develop this process in good faith whenever a project directly or seriously threatens indigenous territories or ways of life, allowing indigenous peoples to influence decision-making in an informed and effective manner[6162]. Although PCPI procedures formalise dialogue between the state and indigenous peoples, their implementation remains uneven in terms of effectiveness and depth, and numerous cases – such as large-scale projects that stay in consultation for years – reveal delays and gaps that strain ecological justice. Strengthening these participatory bodies based on a binding and culturally relevant approach is essential to give real substance to the constitutional recognition of indigenous peoples and to move towards authentic ecological justice.

The American Declaration on the Rights of Indigenous Peoples[63], adopted by the OAS

in 2016, marked another milestone in the promotion and protection of the rights of peoples in the Americas. It recognises that they have suffered historical injustices as a result of colonisation and the dispossession of their lands, territories and natural resources, with the consequent urgent need to respect and promote their intrinsic rights, as well as respect for their traditional knowledge, cultures and practices that contribute to sustainable, equitable development and the proper management of nature. It establishes a duty to ensure that people thoroughly enjoy all the fundamental human rights recognised in international instruments, as well as the collective rights that are indispensable and specific to their existence, well-being and integral development as a people.

About Nature, Article XIX establishes that indigenous peoples have the right to live in harmony with nature and to a healthy, safe and sustainable environment, which are essential conditions for the full enjoyment of other rights such as the right to life, spirituality, worldview and collective well-being. They have the right to participate fully and effectively in decision-making on matters that affect their interests and that relate to the development and implementation of laws, public policies, programmes, plans and related actions. To fulfil this right, States and civil society must consult and cooperate in good faith before adopting and implementing legislative or administrative measures that affect them, to obtain their free, prior and informed consent[64].

At the national level, Law No. 19,253, or the "Indigenous Act", establishes the duty of the State and society to protect and promote the development and culture of these peoples, as well as to protect their ancestral lands, ensuring their proper exploitation, ecological balance, and expansion. It considers the creation of financing programmes to restore the quality of degraded[65] lands and the creation of development areas. The Act regulates participation by stating that the opinions of recognised organisations must be heard and considered when matters within their sphere of influence are discussed[66].

Regarding citizen participation in general, the Escazú Agreement[67] is the only treaty in Latin America and the Caribbean that guarantees the rights of access to information, public participation, and access to environmental justice[68]. Its premise is to balance the relationship between the state, citizens, the market and nature in pursuit of sustainable development, legal certainty and trust in public institutions that strengthen "environmental democracy"[69].

It highlights the relationship and interdependence of access rights and their contribution to strengthening democracy, sustainable development and human rights[70]. It proposes an evolution of human rights associated with nature, as the right of every person to live in a healthy environment, with each State being required to create the necessary measures to ensure the implementation of the Agreement, adopting the most favourable interpretations for the enjoyment of access rights.

The Escazú Agreement would improve control over activities that impact nature and its state of preservation and conservation through mechanisms for gathering and processing environmental information. It facilitates the decision-making process on environmental issues in conjunction with communities, thereby reducing and

preventing socio-environmental conflicts. It establishes the elimination of barriers to the participation of vulnerable groups and individuals, such as indigenous peoples. It gives the State an active role in promoting the aforementioned access rights. Article 7 No. 16 stipulates that “the public authority shall make efforts to identify the public directly affected”.

Article 8 enshrines access to justice in environmental matters through principles such as due process; broad standing to defend nature; measures to facilitate the production of evidence of environmental damage (such as reversal of the burden of proof and dynamic burden of proof); mechanisms for timely enforcement and compliance with judicial and administrative decisions; mechanisms for redress; and promotion of alternative dispute resolution mechanisms in environmental matters.

Indigenous peoples are sectors of society directly interested in the adequate protection of nature, due to the symbiotic relationships that they establish with the environment they inhabit and interact with. The existence of latent socio-environmental conflicts demonstrates that current legislation is insufficient to eradicate the impunity associated with disasters and severe damage to nature. The Chilean State and the international community have committed to protecting and conserving indigenous cultures as the foundation for all others.

The way we treat Nature has historically depended on the conceptions that have been formed about it, influenced by the dialectical relationship between these conceptions and the various conceptualisations of economic development[71]. Damage to nature disproportionately affects indigenous peoples, making measures to curb environmental damage essential for respecting human rights, particularly those of indigenous peoples, and for enabling the evolution of social welfare and the fulfilment of national and international commitments.

IV. Law 21,595 and Ecocide

With the publication of the new Law 21,595 on Economic Crimes and Attacks against the Environment[72] (Paragraph 13, Title VI, Book II of the Criminal Code[73]), the international definition of ecocide[74] is adopted in its entirety in Chilean legislation. This is reflected in the new Articles 308 to 310 ter, which address cases of severe damage to the environment and incorporate all the elements that make up the international definition: the arbitrary nature, the severity of the damage, its extensive scope, its duration and its environmental impact.

- **Wanton**: Wanton: in the international definition of ecocide, this element refers to *"with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated"*, included in the new articles 309 and 310 of the Criminal Code, criminalising acting with “reckless imprudence or mere imprudence or negligence in violation of regulations”, risking environmental damage. Since 17 August 2023, any severe damage to the environment identified in the new law is considered an “unlawful or wanton” act. In this way, Law 21.595 complies with the first constituent element of ecocide.

- **Severe**: refers to *"damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources"*, included in Article 310 of the Criminal Code, considering as an unlawful act seriously affecting one or more of the environmental components of a virgin region reserve, a national park, a natural monument, a national reserve or a wetland of international importance and having irreparable or difficult-to-repair effects (circumstance specified in Article 310 bis).

- **Extenso**: the definition of ecocide considers it to be *"damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings"*, included as a circumstance in the new Article 310 bis, given that for a crime to be considered a profound environmental impact, it must have a significant spatial extent, affect a considerable number of species and/or seriously jeopardise the health of one or more persons.

- **Long-term**: understood as *"damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time"* and fully included in Article 310 bis of the Criminal Code, considering prolonged effects over time to be a circumstance of severe environmental damage.

- **Environment**: the international definition of ecocide establishes damage to any component of the Earth as a requirement for the crime, which is fully adopted by crimes of severe environmental damage, which consider the contamination of water, soil and subsoil, air, animal or plant health, drinking water supply, damage to wetlands, virgin reserves, national parks, natural monuments, national reserves and glaciers.

The crimes of severe environmental damage in the Chilean Penal Code make Chile the first South American country to adopt the elements of the international definition of ecocide. In countries such as Peru, the Dominican Republic, Mexico, Brazil, and Argentina, parliamentary initiatives have also been presented to adopt ecocide in their national legislation. Still, these efforts have not yet seen the light of day.

Possible impacts in specific cases

The publication of the new Economic Crimes Act will enable the reporting of severe environmental damage that was previously unpunishable and not covered by the Chilean Criminal Code. This also means that representatives of various economic activities that cause environmental damage will have to take greater care and measures to prevent any illegal or arbitrary acts that seriously impact the environment, or they will risk facing prison sentences of up to ten years.

Ecocides are committed every day in different parts of the country, causing severe damage that repeatedly affects localities, natural ecosystems and people's health. One example is what is happening in the bay of Quintero-Puchuncaví, where various companies are concentrated that pollute the soil, water and air of the locality, such as

Oxiquim, ENAP, AES Gener and the Codelco Ventanas smelter, which have been held responsible countless times for the pollution in the area, which has caused health emergencies that have overwhelmed health centres due to the poisoning of children, pregnant women, the elderly and residents living near these industries[75]. Over the decades, various health and environmental sanctions have been imposed on the industries responsible for the pollution, but the episodes of pollution have persisted to this day. Therefore, the new environmental crimes could prove to be an incentive for those responsible to stop polluting and affecting the air, water and soil of the Quintero-Puchuncaví bay.

In Quilicura, north of Santiago, the situation is not very different, as the municipality is home to more than 1,600 hectares of industry, which discharges contaminated water into wetlands, generates unpleasant odours that affect the quality of life of its inhabitants, and extracts large quantities of water from underground aquifers. There are also large areas of illegal landfills, which have caused the disappearance of more than 500 hectares of urban wetlands, home to more than 85 species of flora and fauna. This situation also occurs at the Cerros de Renca landfill, an island hill that for years functioned as a legal landfill receiving waste from more than 16 municipalities in the Metropolitan Region, and which currently continues to operate illegally, This has caused soil and groundwater contamination as a result of leachate produced by the waste and debris dumped at the site, as confirmed by reports from the Investigative Brigade for Crimes Against Public Health and the Environment of the Investigative Police (BIDEMA)[76]. These situations may now be punishable by prison sentences, as the new Law 21.595 penalises the dumping of waste on wetlands, the contamination of water resources or soil, and the release of pollutants into the air.

In the town of Pichidangui, in the municipality of Los Vilos, the mouth of the Quilimarí River has also been severely affected by water pollution from the discharge of brine produced by the Aguas San Isidro desalination plant[77]. This situation has been repeatedly denounced for seriously affecting the quality of surface and groundwater in the river basin, impacting its biodiversity and the water security of the inhabitants of the area.

These cases demonstrate how the new regulations can serve as a crucial tool for addressing serious and repeated environmental damage. This situation previously relied on administrative sanctions or minor fines.

Advances and limitations of the law

Law 21,595 represents a radical advance in criminal protection of the environment. However, its full implementation faces challenges, including the scarcity of emission and environmental quality standards for determining objective pollution limits, as well as the limited enforcement capacity of the State, with few officials handling a high volume of complaints.

In this context, the complaint filed for ecocide as a result of the pollution in Lake Villarrica stands out[78]; it is the first case in which Articles 308, 309 and 310 of the new paragraph 13 “Attacks against the environment” of the Penal Code are invoked, which

punish, for example, those who dump polluting substances seriously affecting continental waters. Although there are no previous references for its application, this case sets an important precedent, as it paves the way for Law 21.595 to begin operating as an effective legal tool against severe environmental damage.

Between criminal sanctions and the extractivist model

The next logical step would be for Chile to recognise ecocide as the fifth crime under the jurisdiction of the International Criminal Court, aligning national legislation with international commitments and strengthening global protection of Nature.

However, in parallel with this progress, the regulatory landscape is under pressure from the recent approval of the Framework Law on Sectoral Authorisations[79], which seeks to streamline investment projects on the grounds of efficiency and productivity. This regulation facilitates the circumvention of the Environmental Impact Assessment System[80], allowing projects to be approved through simple sworn statements rather than rigorous studies. This weakens state control mechanisms and increases the vulnerability of communities and ecosystems, consolidating the role of the state as an "investment facilitator" rather than a "guarantor of rights".

Thus, Law 21.595 must be understood within a dual dynamic: on the one hand, a significant advance in the criminalisation of ecocide; on the other, the deepening of the legal rearmament of the Chilean extractivist model, which keeps international commitments such as the Escazú Agreement and the Sustainable Development Goals (SDGs) in tension.

In short, a complex and contradictory scenario is unfolding. While national legislation recognises ecocide as a crime for the first time, other reforms are moving in the opposite direction, weakening environmental institutions and widening the margins of impunity. The challenge, then, is not only to have advanced criminal classification, but also to ensure that laws are effectively enforced and that the protection of life and ecosystems prevails over the logic of investment and economic growth.

V. The Historical and Normative Development of Ecocide

Although the concept of ecocide may seem novel to some, it has been part of environmental discourse for more than five decades. The word derives from the Greek oikos, meaning "house or home", and the Latin caedere, meaning "to demolish or kill". Thus, it literally translates as "killing our home".

The first key precedent in the formulation of the concept comes from the American biologist Arthur Galston in 1970[81], who, in the 1950s, had worked on the development of a chemical component for agribusiness that was transformed into the defoliant Agent Orange[82], used in the Vietnam War to destroy vegetation and poison communities on a massive scale. Dismayed by its use, Galston became an anti-war activist and the first person to describe the enormous damage and destruction of ecosystems as ecocide.

This denunciation gained international momentum when Swedish Prime Minister Olof Palme[83], at the historic 1972 United Nations Conference on the Human Environment in Stockholm[84][85], publicly used the word “ecocide” to refer to the environmental crimes committed during the war. The conference, which marked a milestone in public awareness of environmental issues, resulted in the Stockholm Declaration[86], which established principles and an action plan for the protection of the environment and opened up a new field of discussion in times dominated by war treaties[87]. This gesture introduced another precedent regarding the fundamental importance of environmental issues for human well-being. In Galston and Palme's time, environmental discussion took place in the context of war, and existing international treaties often referred to measures that sought to limit the adverse effects of armed conflict.

That same impetus was taken up shortly afterwards in 1973 by Professor Richard Falk[88], who proposed an International Convention on Ecocide that broadened the view beyond the contexts of war, suggesting that deliberate environmental damage should be treated as an international crime, even in times of peace, Man has caused irreparable damage to the environment, and defines this crime as any act committed with the intention of disrupting or destroying, in whole or in part, a human ecosystem[89].

In 1976, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)[90] established a ban on the use of environmental modification techniques for military or other hostile purposes that produce widespread, long-lasting or severe effects as a means of causing harm to another State[91]. The 1977 Additional Protocol I to the Geneva Conventions[92] on the protection of victims of international armed conflicts prohibits the use of means of warfare that are designed to cause, or can be expected to cause, widespread, long-lasting and severe damage to the natural environment, while “in the conduct of warfare, care shall be taken to protect the natural environment against widespread, long-term and severe damage. Such protection includes the prohibition of methods of warfare which are intended to cause, or may be expected to cause, such damage to the natural environment”[93].

The debate on ecocide continued and was echoed in the initial work of what would later become the International Criminal Court (ICC) in 1985. The first step was taken with the Whitaker Report[94], commissioned to study the prevention and punishment of the crime of genocide. The report recommended the inclusion of ecocide as a separate crime alongside genocide and ethnocide or cultural genocide[95]. The following year, Special Rapporteur Doudou Thiam suggested that the list of crimes against humanity be supplemented with a provision making environmental violations punishable[96].

Since the late 1980s, international environmental instruments have begun to include provisions requiring States to criminalise certain environmentally harmful behaviours, such as the 1989 Basel Convention[97] on the Transboundary Movement of Hazardous Wastes and their Disposal, which established a control system to prevent damage from the transboundary movement of hazardous wastes affecting health and the

environment. Similar provisions were adopted in relation to ozone-depleting substances[98] and illegal trade in wildlife[99], among others, such as the prevention of marine pollution from ships[100] and the elimination of persistent organic pollutants (POPs). These chemicals can have long-term adverse effects on health and the environment[101]. The use of criminal sanctions in multilateral environmental agreements has confirmed the growing awareness of how environmental damage negatively affects the fundamental values of society. These international standards reflect the symbolic importance of using criminal law to ensure the integrity of the environment.

In 1990, Vietnam became the first country to incorporate ecocide into its criminal law. Article 342[102] of the Vietnamese Penal Code stated that *"Those who, in times of peace or war, commit acts of mass destruction of the population of an area, destroy their means of subsistence, undermine the cultural and spiritual life of a country, alter the foundations of a society to weaken it, as well as other acts of genocide or ecocide or destruction of the natural environment, shall be sentenced to between ten and twenty years imprisonment, life imprisonment or capital punishment"*. However, since then, the country has removed the provision on ecocide from the latest version of its Penal Code[103], although it maintains prohibitions against the illegal destruction of forests (Article 189).

Between 1991 and 1996, the International Law Commission, tasked with discussing the content of the Code of Crimes against the Peace and Security of Mankind, considered including an article on acts that seriously damage the environment. The debates focused mainly on the mental element of intent in the crime: the article on ecocide deviated from previous versions to deal only with “deliberate and serious damage to the environment”.

The article was ultimately discarded, and therefore, the only reference to environmental damage was limited to Article 20 of the 1996 Code on war crimes. Similarly, the Rome Statute adopted a similar approach for the jurisdiction ratione materiae of the International Criminal Court, which activates its jurisdiction for environmental damage only in the form of war crimes, as established in Article 8(2)(b)(iv)[104], adopted in 1998[105].

Following the collapse of the Soviet Union, several former Soviet republics incorporated ecocide into their criminal codes. In the Criminal Code of the Kyrgyz Republic[106], following Article 373 on genocide, Article 374 prohibits “The mass destruction of the animal or plant kingdoms, the pollution of the atmosphere or water resources, as well as the commission of other actions likely to cause an ecological catastrophe, shall be punished by imprisonment for a term of 12 to 20 years”[107]. Many of the former Soviet republics have echoed this provision with similar legislation.

Finally, taking into account Additional Protocol I of 1977 to the Geneva Conventions[108], the Statute, in Article 8(2)(b), established as a serious violation of the laws and customs applicable in international armed conflicts acts such as launching an attack intentionally, knowing that it will cause widespread, long-term and severe damage to

the natural environment that would be manifestly excessive in relation to the concrete and direct overall military advantage anticipated[109].

After the end of the Vietnam War and the Cold War, support for an ecocide law gained momentum around the world. It has been enshrined as a crime in the criminal codes of Vietnam (1990)[110], Russia (1996)[111], Kazakhstan (1997)[112], Kyrgyzstan (1997)[113], Tajikistan (1998)[114], Georgia (1999)[115], Belarus (1999)[116], the Republic of Moldova (2002)[117], Armenia (2003)[118], and Mexico (the states of Chiapas 2020[119] and Jalisco 2022[120]). In 2020, France[121] passed a law classifying ecocide as a crime punishable by up to 30 years in prison and a fine of up to €4.5 million. Other countries, such as the United Kingdom, Spain, Argentina, Ecuador, Mexico City, Peru, and Brazil, are pursuing parliamentary initiatives or jurisprudential developments to recognise the crime.

The renewed need to include the crime of ecocide, understood as severe and widespread damage to the environment, gained symbolic and legal momentum thanks to the work of British lawyer Polly Higgins. She not only revitalised the term from an ethical-legal perspective, but also promoted its global recognition as a legal imperative to halt planetary destruction. The term "ecocide" was popularised in her book "*Eradicating Ecocide: Exposing the Corporate and Political Practices that Destroy the Planet and Proposing the Laws Needed to Eradicate Ecocide*"[122], written in 2010 in response to the Deepwater Horizon case[123]. In 2017, together with Jojo Mehta[124], she founded Stop Ecocide International (SEI)[125]. This organisation has brought together a global network of lawyers, diplomats, activists and communities to promote the recognition of ecocide as a crime under the jurisdiction of the International Criminal Court. Its work includes promoting legislative reforms, drafting legal proposals and political advocacy at the state and multilateral levels, to incorporate this criminal offence into the Rome Statute and strengthen environmental protection on a global scale.

Even the Catholic Church, through Pope Francis, has raised its voice to recognise ecocide as a moral and legal category, expressing the need to enshrine the crime of ecocide in international criminal law as a fifth category of crime in the Rome Statute, to protect "our common home" from what has been called "ecological sins" due to massive and significant destruction of nature[126]. In November 2019, Pope Francis also began to oppose the enormous destruction of the environment, stating that it "is the duty of the law not to allow these crimes or any action capable of producing an ecological disaster or destroying an ecosystem to go unpunished"[127].

The collective effort to establish a clear legal definition materialised with the proposal of the Panel of Experts convened by Stop Ecocide in 2021. This definition laid the groundwork for identifying ecocide as an unlawful, arbitrary act that is seriously harmful to the environment, with the potential for extensive or lasting impact. The Foundation[128] convened a Panel of Independent Experts to agree on the Legal Definition[129], composed of twelve jurists from different parts of the world who were tasked with formulating a practical and effective definition of the crime. The Panel was assisted by external experts and a public consultation that gathered hundreds of ideas from around the world, formulated from the perspectives of law, economics, politics, youth, faith and indigenous communities.

The legal definition was finally presented in May 2021 as: *"Any omission, unlawful or arbitrary act perpetrated with the knowledge that there is a substantial probability that it will cause severe damage that is extensive or long-lasting to the environment"*[130]. In this sense, the term establishes two requirements to satisfy the criminal offence. On the one hand, there must be a considerable probability that the conduct will cause severe damage that is both extensive and long-lasting. On the other hand, evidence is also needed that the acts are unlawful or arbitrary. Thus, to meet the criminal definition, it will be necessary to demonstrate the substantial probability that the arbitrary or illegal actions or omissions will cause severe damage that would be extensive or long-lasting.

In 2022, the European Parliament received a recommendation from the Committee on Legal Affairs to recognise ecocide in relation to corporate liability for massive damage to the environment[131]. This comes shortly after the prestigious European Law Institute approved the project[132] to draft a model ecocide law for the European Union. Meanwhile, another report by the European Parliament's Foreign Affairs Committee on the effects of climate change on human rights and the role of environmental defenders in this area resolved to urge the European Union and its Member States to take the initiative to recognise "ecocide" as an international crime under the Rome Statute[133]. Stop Ecocide International pursues this approach to the criminalisation of ecocide at the global level and has been supported by various countries and personalities.

In line with this, in July 2023, Belgium took a significant step by explicitly supporting the inclusion of ecocide as an international crime. Article 94 of the new Belgian Criminal Code defines ecocide as "the deliberate commission, by act or omission, of an illegal act causing serious, widespread and lasting damage to the environment, knowing that such act causes such damage, provided that such act constitutes a violation of federal legislation or an international instrument binding on the federal government, or if the act cannot be located in Belgium." From a comparative law perspective, penalties for ecocide range from 3 to 20 years imprisonment and fines of no less than US$2,300.

On 3 July 2025, the Inter-American Court of Human Rights (IACHR)[134] issued Advisory Opinion 32/25 (OC-32)[135] on Climate Emergency and Human Rights, in response to a request from Chile and Colombia, marking a milestone in the recognition of the right to a stable climate as a human right. The ruling establishes that States have specific legal obligations in the face of the climate emergency, including prevention, mitigation, adaptation, and redress for its impacts. The Court recognises that the climate crisis threatens the effective enjoyment of fundamental rights such as life, health, water, food, housing and self-determination, and affirms that protecting the environment also means protecting human rights and nature. It requires States to act with enhanced due diligence, even without complete scientific certainty, and to cooperate internationally through financing, technology and assistance to vulnerable countries. Among its main advances, OC-32 integrates the Escazú Agreement[136] as a regional reference, establishes the duty to guarantee a just energy transition, and demands the effective protection of environmental defenders and affected

communities. It also addresses the duty to prevent forced displacement caused by climate disasters and urges the adoption of inclusive, participatory public policies based on scientific evidence.

In a context such as Chile's, marked by droughts, fires and environmental inequality, this pronouncement provides a solid legal basis for demanding climate action and socio-environmental justice. Although it is not binding, it sets a normative and ethical standard that can guide public policies, legislation and litigation throughout the region.

On 23 July 2025, the International Court of Justice (ICJ)[137] issued its Advisory Opinion[138] on the obligations of States in relation to climate change, at the request of the UN General Assembly on "the obligations of States in relation to climate change"[139]. The ICJ concluded that States have legal responsibilities under international law to protect the climate system, both within and beyond their borders, including actions by private actors under their jurisdiction. It establishes that causing significant damage to the climate constitutes an unlawful act, and that States may be legally responsible for omissions or acts that cause such damage. The Court also emphasises the duty to cooperate internationally, apply the precautionary principle and take intergenerational equity into account. Furthermore, state obligations are not limited to the Paris Agreement or environmental treaties, but are also based on customary international law, human rights standards and general principles of international law. Reparations may include compensation and restoration of affected ecosystems, in accordance with the Paris Agreement's principle of common but differentiated responsibilities (CBDR)[140]. The opinion, with majority support, represents a legal milestone in the fight for global climate justice.

VI. Conclusions

The situation described throughout this article allows us to affirm that we are at a historic turning point. The global socio-environmental crisis, and in particular the one in Chile, exposes the contradictions of an extractivist model that has overexploited natural common goods under a legal architecture that prioritises investment over life. In this scenario, it is urgent to move towards ecological and climate justice that not only criminalises offences but also repairs damage, prevents further aggression and protects the most affected communities.

The enactment of Law 21.595 is an undeniable step forward in systematising economic and environmental crimes and incorporating, for the first time, the notion of ecocide into national legislation. However, its limitations in terms of enforcement, reparation, and prevention show that partial reforms are not enough: a fundamental transformation of the relationship between law, territory, and nature is required. Scientific evidence and the multiple socio-environmental conflicts active in Chile underscore this urgency, while the Framework Law on Sectoral Permits reflects a setback in environmental protection.

The incorporation of ecocide as a crime under the jurisdiction of the International

Criminal Court appears to be an essential step in closing the gap between international commitments and local realities, establishing a binding standard and ensuring that the most serious crimes against nature do not go unpunished. In addition to its reparative role, ecocide is a key deterrent to prevent further aggression and open up restoration processes in devastated territories. But beyond criminal justice, true ecological justice also requires progress in climate justice, recognising that the impacts of the crisis affect communities unequally and that the protection of environmental defenders is an indispensable condition for safeguarding both nature and human rights. In this sense, the recognition of nature as a subject of rights and the binding participation of indigenous peoples are fundamental horizons for imagining a different model of planetary coexistence. Ensuring effective mechanisms for consultation, participation, and free, prior and informed consent is part of that task.

The international context reinforces this urgency: recent rulings by the Inter-American Court of Human Rights and the International Court of Justice have clearly established that the protection of the climate and nature is part of states' human rights obligations. This new legal horizon, which articulates environmental justice, climate justice, criminal justice and human rights, paves the way for international law capable of addressing the civilisational challenges of the 21st century. In other words, we are witnessing a political development that marks a new advance in rights within our historical moment. Just as the Declaration of the Rights of Man and of the Citizen of 1789 and the Universal Declaration of Human Rights of 1948 were milestones that broadened the conception and recognition of rights, today the formulation of the rights of Nature and the classification of ecocide as a crime seek to open up a different paradigm: the beginning of a new era in which priority is given to the deepening of democracy, climate justice and the transition to a more just and habitable world.

Ultimately, moving towards the recognition of ecocide, both nationally and internationally, is not a rhetorical option but an ethical, political and legal requirement in view of the magnitude of the crisis. Chile, due to its vulnerability and its status as a State Party to the Rome Statute, has the opportunity to take a leading role in this transformation. Committing to robust legislation that is consistent with global commitments –including the Escazú Agreement, ILO Convention 169 and the American Declaration on the Rights of Indigenous Peoples– means, in short, reconfiguring the current legal paradigm, shifting the anthropocentric view, strengthening environmental democracy and defending the continuity of life in all its forms, laying the foundations for a new pact between humanity and Nature.

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